

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

MICHAEL JOSEPH DERROW,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 2:14-cv-00211-TLW
	)	
KENNY ATKINS,	)	
	)	
Respondent.	)	
	)	
_____	)	

**ORDER**

Petitioner Michael Joseph Derrow, an inmate at Federal Correctional Institution Edgefield, filed this pro se habeas petition pursuant to 28 U.S.C. § 2241 on January 24, 2014. (Doc. #1). This matter is before the Court for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Bruce Howe Hendricks, to whom this case was assigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c), (D.S.C.). In the Report, the Magistrate Judge recommends that this Court dismiss the petition without prejudice and without requiring Respondent to file a return. (Doc. #8). Petitioner filed timely objections to the Report on March 21, 2014 (Doc. #10), and supplemental objections on April 3, 2014 (Doc. #13). This matter is now ripe for disposition.

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections . . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate

judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

The Court has carefully reviewed the Report and Petitioner's objections and supplemental objections thereto in accordance with this standard, and it concludes that the Magistrate Judge accurately summarizes the case and the applicable law. Accordingly, it is hereby **ORDERED** that the Report and Recommendation is **ACCEPTED** (Doc. #8), and Petitioner's objections and supplemental objections thereto are **OVERRULED** (Doc. #10, 13). For the reasons articulated by the Magistrate Judge, the petition is **DISMISSED** without prejudice and without requiring Respondent to file a return. Petitioner's motion to hold his petition in abeyance is **DENIED**.<sup>1</sup> (Doc. #14). In light of this disposition, Petitioner's motion to amend and for summary judgment is **DENIED** as **MOOT**. (Doc. #15).

**IT IS SO ORDERED.**

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<sup>1</sup> In Persaud v. United States, the Supreme Court granted Persaud's petition for writ of certiorari and remanded the case to the Fourth Circuit Court of Appeals "for further consideration in light of the position asserted by the Solicitor General in his brief for the United States filed on December 20, 2013." 134 S. Ct. 1023 (2014). In his brief for the United States, the Solicitor General defined the issue in Persaud as "[w]hether petitioner is entitled to seek federal habeas corpus relief under 28 U.S.C. § 2241 on the ground that 28 U.S.C. § 2255 is 'inadequate or ineffective' to allow him to raise a claim that an intervening and retroactively applicable statutory-construction decision establishes that the district court erroneously imposed a mandatory minimum sentence of life imprisonment." Brief for Respondent at I, Persaud, 134 S. Ct. 1023. Despite Petitioner's assertion that Persaud raises "the exact same issue" as his petition (Doc. #14 at 1), the Court finds that Persaud is inapposite and that there is no need to hold this petition in abeyance pending the Fourth Circuit's decision in that case.

s/ Terry L. Wooten  
Terry L. Wooten  
Chief United States District Judge

October 29, 2014  
Columbia, South Carolina